

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sophia Manuel	Team: Team # 4	CCRB Case #: 201308016	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/07/2013 7:40 AM	Location of Incident: 7th Precinct Stationhouse	Precinct: 07	18 Mo. SOL 12/7/2014	EO SOL 12/7/2014	
Date/Time CV Reported Fri, 08/30/2013 10:50 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/30/2013 10:50 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Hugh Barry	05409	946768	007 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Gregory Faljean	04998	930122	007 PCT
2. POM Christopher Pierce	23737	947351	007 PCT
3. POM Johnny Szeto	14931	940785	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A. POM Hugh Barry	Force: PO Hugh Barry used physical force against § 87(2)(b)	
B. An officer	Force: An officer used physical force against § 87(2)(b)	

Case Summary

On August 30, 2013, § 87(2)(b) called the CCRB and filed this complaint (encl. 4-5). On June 7, 2013, § 87(2)(b) was arrested in his building, located at § 87(2)(b) in Manhattan, for assault with intent to cause physical injury. PO § 87(2)(b) Pierce and PO Hugh Barry transported him to the 7th Precinct stationhouse. In his initial statement, § 87(2)(b) stated that six officers punched him outside the stationhouse, but during his CCRB statement, he testified that only the driver punched him outside the stationhouse and that the driver and a sergeant punched him inside the holding cell. Therefore, the following allegations resulted:

- **Allegation A: Force – PO Hugh Barry used physical force against § 87(2)(b)**
- **Allegation B: Force – An officer used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statement

Complainant: § 87(2)(b)

- § 87(2)(b)

Arrest Photo

In his arrest photo, § 87(2)(b) has red scratches across the right side of his face and nose. There is also a red spot on his right cheekbone (encl. 34).

Medical Records

§ 87(2)(b) was brought to § 87(2)(b) Hospital Center at 12:51 p.m. on § 87(2)(b), in handcuffs, by police officers. His chief complaint was that while under arrest, he requested a medical evaluation for a history of seizures (encl. Privileged Folder).

CCRB Statement

§ 87(2)(b) was interviewed at § 87(2)(b), in Manhattan on October 7, 2013 (encl. 6-12). § 87(2)(g) during his initial statement, § 87(2)(b) stated that the incident occurred on August 8, 2013, while the investigation determined and he later agreed that the incident occurred on June 7, 2013. In his initial statement, § 87(2)(b) stated that six officers punched him outside the stationhouse, but during his CCRB statement, he testified that only the driver punched him outside the stationhouse and that the driver and a sergeant punched him inside the holding cell.

On June 7, 2013, at approximately 7:00 a.m., § 87(2)(b) was in his Single Room Occupancy residence at § 87(2)(b), in Manhattan, with his girlfriend, § 87(2)(b). They were involved in a domestic dispute, and § 87(2)(b) scratched § 87(2)(b)'s face with her fingernails. § 87(2)(b) sustained multiple red scratches across his face. § 87(2)(b) called the security desk for help in calming § 87(2)(b). A security officer came up and talked to § 87(2)(b) in the hallway. The security officer told another security officer to call the police.

Approximately six uniformed police officers arrived. They talked to § 87(2)(b) and § 87(2)(b). They decided to arrest § 87(2)(b) for assault. They placed handcuffs on his wrists and shackles on his ankles. Officers placed § 87(2)(b) into a marked police vehicle. The driver was a

35-year-old light-skinned Hispanic male, 5'11" tall, with a heavy build, identified by the investigation as PO Hugh Barry. The front passenger was a light-skinned male, identified by the investigation as PO § 87(2)(b) Pierce. PO1, an unidentified Asian male, 5'6" tall, with an average build, sat in the rear, next to § 87(2)(b) (PO Johnny Szeto was identified as the only Asian male officer who responded to § 87(2)(b), but the investigation found that he did not ride to the stationhouse with § 87(2)(b)).

As they drove § 87(2)(b) to the 7th Precinct stationhouse, the three officers told § 87(2)(b) that § 87(2)(b) was going to have him arrested. § 87(2)(b) said, "I'd kick the window out of this car if I knew that I could get away with it." § 87(2)(b) was sitting still. PO Barry said, "I'm tired of hearing you man." PO Barry drove a little further and parked at the 7th Precinct stationhouse. He opened § 87(2)(b)'s door and punched § 87(2)(b)'s right cheek three times with a closed fist. PO Barry punched § 87(2)(b)'s right ribcage twice. PO Barry said, "Oh I just got him before he kicked it." PO Barry pulled § 87(2)(b) out of the car and dragged him 30-40 feet to the stationhouse by his handcuffs. § 87(2)(b)'s buttocks and legs scraped against the pavement as he was dragged.

The officers and § 87(2)(b) entered the stationhouse. § 87(2)(b) was placed in a holding cell. PO Barry and PO2 entered the cell. PO2 was an unidentified white or Hispanic male sergeant, 5'7" tall and 35-years-old, with a heavy build. § 87(2)(b) knew he was a sergeant because officers were calling him "sergeant." PO Barry and PO2 punched § 87(2)(b). PO Barry punched § 87(2)(b)'s right cheek twice with a closed fist. § 87(2)(b) did not remember where PO2 punched him. § 87(2)(b) did not see any other prisoners in the holding cell, but an unidentified acquaintance later told him that there was someone present who witnessed the officers punching § 87(2)(b).

Officers removed § 87(2)(b) from the cell and took his photo and fingerprints. PO Barry, PO Pierce, and PO1 took him to Central Booking. An officer at Central Booking asked § 87(2)(b) whether he had any health problems. § 87(2)(b) said he had a history of seizures. The Central Booking officer said that § 87(2)(b) had to be taken to the hospital because of his history of seizures. PO Barry, PO Pierce, and PO1 drove § 87(2)(b) to § 87(2)(b) Hospital Center. PO Barry was upset with § 87(2)(b). He said, "I told you not to say anything about your health." Initially, § 87(2)(b) stated that PO Barry punched § 87(2)(b) more on the way to the hospital, but when asked for details, § 87(2)(b) said that PO Barry did not punch him again. At the hospital, § 87(2)(b) received treatment for his history of seizures. He did not receive any treatment for the injuries to his face.

At the hospital, § 87(2)(b) heard § 87(2)(b)'s voice coming from a room nearby, though he never saw her. He heard officers telling her to press charges. He heard officers say, "No don't write that down. Write this down. We'll lock you up." One of § 87(2)(b)'s friends, § 87(2)(b) (address and phone number unknown), went to the hospital to check on § 87(2)(b). § 87(2)(b) stood in the hallway, where he could hear § 87(2)(b) and the officers. He later told § 87(2)(b) that the officers were telling § 87(2)(b) what to write and were threatening to arrest her. Officers told § 87(2)(b) to leave because § 87(2)(b) was not allowed to have any visitors. § 87(2)(b) left.

PO Barry, PO Pierce, and PO1 took § 87(2)(b) back to Central Booking.

Attempts to Contact Civilians

§ 87(2)(b) was called on September 27, 2013 (encl. 13). She stated that on June 7, 2013, she left the scene after she saw officers talking to § 87(2)(b) in the hallway. She did not have any further interaction with the officers after seeing them in the hallway. She did not go to the hospital.

Based on the Prisoner Holding Pen Roster (encl. 65), the investigation determined that § 87(2)(b) was in the holding cell at the same time as § 87(2)(b). A please call letter was mailed to the address listed on his arrest report on December 3, 2013. A Lexis Nexis search yielded two cell phone numbers and an email address associated with § 87(2)(b). Both

numbers were called on December 3, 2013. The numbers were not in service. A please call letter was emailed to § 87(2)(b) on December 3, 2013. On December 24, 2013, the letter was returned to the CCRB by the United States Postal Service because the address was incorrect. On December 24, 2013, a please call letter was mailed to § 87(2)(b) at the correct address. This letter was not returned by the United States Postal Service. § 87(2)(b) did not contact the CCRB.

NYPD Statements:

Witness Officer: PO § 87(2)(b) PIERCE

- § 87(2)(b)
- *PO Pierce worked from 11:15 p.m. to 7:50 a.m., assigned to patrol Sectors B and F. He was in uniform, partnered with PO Barry, and assigned to marked RMP number § 87(2)(b)*

Memo Book

PO Pierce wrote the following memo book entries: at 7:15 a.m., he responded to an assault in progress at § 87(2)(b) in Manhattan. At 7:40 a.m., § 87(2)(b) was arrested for assault in the third degree. The victim was uncooperative and refused to wait to be photographed. The victim and defendant refused medical treatment and refused to cooperate. At 9:50 a.m., § 87(2)(b) was transported to appear before the Assistant District Attorney. At 11:15 a.m., § 87(2)(b) was lodged at § 87(2)(b). At 11:30, § 87(2)(b) went sick (encl. 13-17).

Domestic Incident Report

A domestic incident report was prepared at 8:00 a.m. on June 7, 2013. The victim was § 87(2)(b). She had facial injuries, but was not removed to the hospital. The suspect was § 87(2)(b). He had a cut to his face, but was not removed to the hospital. The domestic incident report was not given to § 87(2)(b) because she refused. PO § 87(2)(b) Pierce was the reporting officer (encl. 41-46).

Arrest report

In arrest number § 87(2)(b) § 87(2)(b) was arrested at 7:40 a.m. on June 7, 2013 by PO § 87(2)(b) Pierce. He was charged with assault with intent to cause physical injury. No force was used to arrest him. The details state that the victim said that § 87(2)(b) hit her, causing lacerations to her lip and a cut/bruise to her left eye. The victim then became uncooperative and refused pictures. The security guard at the location stated that he heard them fighting and heard the victim being hit (encl. 35-37).

CCRB Statement

PO § 87(2)(b) Pierce was interviewed at the CCRB on October 21, 2013 (encl. 18-19). At 7:15 a.m. on June 7, 2013, PO Pierce and PO Barry drove to § 87(2)(b) in Manhattan. PO Johnny Szeto and PO Orvin Fagon were already there. The victim, identified by the investigation as § 87(2)(b) was talking to a security guard in the hallway. The officers asked what happened and § 87(2)(b) said that § 87(2)(b) hit her. She had marks on her face and possibly a cut on her lip. The security guard said, "We heard them fighting and we heard him hitting her." PO Pierce and PO Barry went to § 87(2)(b)'s apartment. They asked § 87(2)(b) what happened. He said that nothing happened. PO Pierce and PO Barry handcuffed § 87(2)(b). They did not shackle his ankles. After § 87(2)(b) saw § 87(2)(b) being removed from the building, she became uncooperative and refused to be photographed or taken to the hospital.

The officers put § 87(2)(b) in the police vehicle. PO Barry drove and PO Pierce sat in the front passenger seat. PO Barry did not recall any officer sitting in the back seat with § 87(2)(b). Neither PO Szeto nor PO Fagon sat in the car with § 87(2)(b). As they drove to the stationhouse, § 87(2)(b) was not happy, but he was not particularly angry. Nothing unusual happened on the way to the stationhouse. § 87(2)(b) did not say anything about kicking the window.

When they got to the stationhouse, PO Barry and PO Pierce walked § 87(2)(b) into the stationhouse. They did not drag him. PO Pierce placed § 87(2)(b) in a holding cell. At no point did PO Pierce, PO Barry, or any officer punch § 87(2)(b). PO Pierce did not know which sergeants were in the stationhouse at the time.

After PO Pierce processed § 87(2)(b)'s arrest, PO Barry and PO Pierce drove him to the Assistant District Attorney, where all domestic violence defendants go. From the ADA, other unidentified officers drove § 87(2)(b) to the hospital, either because he said he was not feeling well or he needed medicine.

Subject Officer: PO HUGH BARRY

- § 87(2)(b)
- *PO Barry worked from 11:15 p.m. to 7:50 a.m., assigned to Sector B with PO § 87(2)(b) Pierce. He was in uniform and assigned to a marked vehicle.*

Memo book

PO Barry wrote the following memo book entries: at 7:20 a.m., he responded to § 87(2)(b) in Manhattan to back Sector D with an assault in progress. At 7:40 a.m., PO Pierce arrested one perpetrator and transported him to the stationhouse (encl. 20-22).

CCRB Statement

PO Hugh Barry was interviewed at the CCRB on November 14, 2013 (encl. 23-24). PO Barry had no independent recollection of the incident. PO Barry was shown § 87(2)(b)'s arrest photo. He recognized § 87(2)(b) and remembered that he was arrested, but did not recall the circumstances surrounding the arrest. He did not recall how § 87(2)(b) had received the injuries to his face. PO Barry did not recall who was driving the police vehicle on June 7, 2013. PO Barry did not recall hearing § 87(2)(b) threaten to kick the windows of the police vehicle. He did not recall whether any force was used against § 87(2)(b). He did not recall punching § 87(2)(b) or dragging him across pavement. He did not see any other officer punch § 87(2)(b) or drag him across the pavement.

Witness Officer: SGT GREGORY FALJEAN

- § 87(2)(b)
- *Sgt. Faljean worked from 11:05 p.m. to 8:05 a.m., assigned as patrol supervisor with PO Hickey. He was in uniform and assigned to marked vehicle number § 87(2)(b).*

Memo Book

Sgt. Faljean did not write any memo book entries regarding the incident. At 3:08 a.m., he supervised an arrest made by PO Wong at § 87(2)(b). His next entry was at 8:02 a.m., when his tour ended (encl. 25-26).

CCRB Statement

Sgt. Gregory Faljean was interviewed at the CCRB on December 4, 2013 (encl. 27-28). Sgt. Faljean did not have any recollection of the incident. He said that between the arrest he supervised at 3:08 a.m. and the end of his tour at 8:02 a.m., he would have been inside the stationhouse. Sgt. Faljean did not punch § 87(2)(b) or any civilian. He did not see any officer punch § 87(2)(b).

Witness Officer: PO JOHNNY SZETO

- § 87(2)(b)
- *PO Szeto worked from 11:15 p.m. to 7:50 a.m., assigned to Sector D, with PO Fagon. They were in uniform and assigned to marked police vehicle number 3931.*

Memo Book

PO Szeto wrote the following memo book entries: at 7:15 a.m., he responded to an assault in progress at § 87(2)(b) in Manhattan. At 7:40 a.m., one person was arrested by Sector B. Also at 7:40 a.m., he responded to a possible crime at § 87(2)(b) (encl. 29-30).

CCRB Statement

PO Johnny Szeto was interviewed at the CCRB on December 19, 2013 (encl. 31-32). PO Szeto did not have any recollection of the incident. PO Szeto stated that he would not have driven back to the stationhouse in the same vehicle as PO Barry, PO Pierce, and § 87(2)(b) because his memo book stated that at 7:40 a.m., he responded to a possible crime at § 87(2)(b).

PO Szeto spent about five minutes in the stationhouse when he ended his tour. He did not recall seeing § 87(2)(b) there. He did not see any officers punch § 87(2)(b) or drag him across the pavement.

Medical Records

§ 87(2)(b) was brought to § 87(2)(b) at 12:51 p.m. on § 87(2)(b), in handcuffs by police officers. His chief complaint was that while under arrest, he requested a medical evaluation for a history of seizures. His last seizure was in 2011. The nurse practitioner wrote that § 87(2)(b) was prescribed klonopin and took it that morning. She wrote that he denied any complaints at the time of his hospital visit. In her notes on her examination, she did not mention § 87(2)(b) having any injuries or complaining of any injuries (encl. Privileged Folder).

NYPD Documents

Roll call

According to the roll call from the 7th Precinct, Sgt. Faljean was the desk officer and assigned to vehicle number 5654 from 11:05 p.m. on June 6, 2013 to 8:02 a.m. on June 7, 2013. Sgt. Spataro was the patrol supervisor from 11:05 p.m. to 8:02 a.m. PO Szeto and PO Fagon were assigned to Sector D from 11:15 p.m. to 7:50 a.m. PO Barry and PO Pierce were assigned to Sectors B and F from 11:15 p.m. to 7:50 a.m. PO Fernandez was assigned to Rutgers/Madison and transported a prisoner to the hospital at 12:00 p.m. on June 7, 2013. No partner is listed for PO Fernandez. Sgt. Lee was at the desk from 6:55 a.m. to 3:52 p.m. Sgt. Lopez was the patrol supervisor from 6:55 a.m. to 3:52 p.m. (encl. 52-64).

Command Log

According to the Command Log, Sgt. Lee was at the desk from 7:00 a.m. to 2:50 p.m. Sgt. Spataro performed administrative duties starting at 7:00 a.m. Sgt. Lopez conducted roll call at 7:10 a.m. PO Pierce brought § 87(2)(b) to the stationhouse at 7:45 a.m. His physical and mental condition was apparently normal. He was taken to MCB at 9:50 a.m. in van number § 87(2)(b) (encl. 66-72).

Prisoner Holding Pen Roster

§ 87(2)(b) was logged in the holding pen at 7:50 a.m. by PO Pierce. He was out at 9:50 a.m. The only other prisoner who overlapped with § 87(2)(b) was § 87(2)(b) who was in at 3:15 a.m. and out at 9:50 a.m. (encl. 65).

911 call

On June 7, 2013, a security guard from § 87(2)(b) in Manhattan called 911 to report that an elderly tenant who lived in § 87(2)(b) was physically abusing his girlfriend. She was bleeding. There were no weapons. EMS was connected. The security guard told the EMS operator that there was a physical altercation between a girlfriend and boyfriend. The female had blood on her, but the security guard did not know if she was cut (encl. 33).

AIDED

An AIDED report worksheet was prepared for § 87(2)(b) at 7:15 a.m. on June 7, 2013. It states that she refused medical aid (encl. 38).

Medical Treatment of Prisoner Report

A report was prepared for § 87(2)(b) at 7:40 a.m. on June 7, 2013. He refused medical aid. The remarks state that § 87(2)(b) refused medical aid for a bruise and cut to his face. He had a history of psychiatry, seizure, and methadone. The bruises were sustained by the victim (encl. 40).

Medical Treatment of Prisoner Report

§ 87(2)(b) was transported to § 87(2)(b) Hospital at 12:30 p.m. on § 87(2)(b) by PO Fernandez of the 7th Precinct. § 87(2)(b) requested medical aid for seizures. He was restrained in leg shackles. The remarks state that § 87(2)(b) reported a history of seizures and that he needed medication (encl. 39).

Arrest for Incident and Disposition

- On December 4, 2013, an OCA search for § 87(2)(b) s June 7, 2013 arrest found no results (encl. 110).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 9, 2013 with regard to the incident (encl. 73).

§ 87(2)(b)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3).

Subject Officers CCRB History

- PO Hugh Barry has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 1).

Conclusion

Identification of Subject Officers

- § 87(2)(b) stated that the officer who punched him in the parking lot, dragged him across the pavement, and punched him in the holding cell was the driver of the police vehicle. He described this officer as a 35-year-old light-skinned Hispanic male, 5'11" tall, with a heavy build. § 87(2)(b) was unable to describe the officer's partner, except that he was a light-skinned male. PO Pierce testified that PO Barry drove the police vehicle from 133 Pitt Street to the 7th Precinct stationhouse, while PO Pierce sat in the front passenger seat. PO Barry did not recall who drove. PO Szeto denied riding with PO Barry and PO Pierce. § 87(2)(b) Because his pedigree information is relatively consistent with that provided by § 87(2)(b) and because PO Pierce stated that PO Barry drove, Allegation A is pleaded against PO Barry.
- § 87(2)(b) alleged that a white or Hispanic male sergeant, 5'7" tall and 35 years old, with a heavy build, punched him in the holding cell at the 7th Precinct stationhouse. According to the command log and Sgt. Faljean's CCRB statement, Sgt. Faljean, Sgt. Spataro, Sgt. Lopez, and Sgt. Lee were all in the stationhouse at the time of the incident. Sgt. Lee is listed in CTS as an Asian male. Sgt. Faljean, Sgt. Spataro, and Sgt. Lee are listed as white and Hispanic males. Since § 87(2)(b)'s recollection of the incident was blurred, inconsistent, and embellished, the investigation was unable to determine which officer allegedly punched § 87(2)(b). Allegation B is pleaded against "an officer."

Investigative Findings and Recommendations

Allegation A: Force – PO Hugh Barry used physical force against § 87(2)(b)

Allegation B: Force – An officer used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g) stated that he was handcuffed and shackled, and then transported to the 7th Precinct by two white male officers and one Asian male officer. § 87(2)(b) stated that on the way, he threatened to kick the window out of the police car. He alleged that the driver, identified by the investigation as PO Barry, pulled § 87(2)(b)

§ 87(2)(a) out of the car, punched him, and dragged him across the pavement to the stationhouse, where PO Barry and an unidentified sergeant, PO2, continued to punch § 87(2)(b) in the holding cell.

PO Barry, PO Szeto, and Sgt. Faljean had no recollection of the incident. PO Pierce stated that § 87(2)(b) was only handcuffed, not shackled, for his transport to the stationhouse. PO Pierce stated that only he and PO Barry rode with § 87(2)(b) to the stationhouse. PO Pierce denied hearing § 87(2)(b) threaten to kick the window. He denied seeing PO Barry or any officer punch or drag § 87(2)(b). PO Pierce testified that he did not use force towards § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date